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February 13, 2003

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, DC 20554

Re: Notice of Written Ex Parte Communication, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

As AT&T and other carriers have demonstrated in this proceeding, there is substantial evidence that requesting carriers would be impaired in their ability to serve the mass market using voice-grade loops without access to unbundled switching. The availability of unbundled switching allows requesting carriers to combine the switching element with unbundled loops and transport to provide service through an arrangement known as the "UNE Platform." Using the UNE Platform, competitive carriers are, for the first time since the passage of the 1996 Act, able to compete against the incumbent LECs, serving over 10 million lines nationwide.

The incumbent LECs nonetheless continue, in the closing days of this proceeding, to urge the Commission to dramatically restrict the availability of UNE-P without regard to demonstrated impairment. They argue that the availability of UNE-P is inappropriate, asserting that it creates disincentives for both incumbent and competitive LECs to invest in new facilities, and they state that the Commission should promote facilities-based entry to the exclusion of other forms of entry such as UNE-P.

The Commission must look with suspicion on BOC claims that deregulatory relief will result in increased investment. In exchange for being allowed to merge, SBC and Verizon both promised to invest out-of-region to compete against other Bell companies. They did not. Network investment commitments were also made to State Commissions in Pennsylvania and Oklahoma in exchange for regulatory relief. These also remain unmet. And just last week, Verizon publicly admitted that a phaseout of UNE-P unbundling rules wouldn't result in an immediate increase in capital expenditures. Ivan Seidenberg, chief

executive officer of Verizon Communications, Inc., was quoted saying that, absent UNE-P obligations, Verizon would "start to develop the confidence to spend more," but that it would take 12-24 months for that confidence to "blossom."

Finally, as this proceeding draws to a close, a proceeding in which the Bells have championed the notion that intermodal competition will sufficiently police the marketplace and control monopolistic behavior in a deregulated wireline world, SBC has proven that it will invest whenever and where ever it believes investment is in its best corporate interest by announcing that it is willing to spend \$10 billion to buy control of DirecTV – a major player in the satellite world that, in an intermodal world, is supposed to stand *against* SBC as a rival. SBC's announcement alone disproves the theory of intermodal competition.

The Commission should reject these ILEC arguments. As detailed in the attached paper, the record does not support the assertion that UNE-P creates inappropriate disincentives to invest in facilities. Indeed, if anything, the record shows that the availability of UNE-P will, in the long term, result in more investment in facilities, not less.

Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

A handwritten signature in dark ink, appearing to be 'JM' followed by a horizontal line.

Joan Marsh

cc: Matt Brill  
Jordan Goldstein  
Dan Gonzalez  
Chris Libertelli  
Lisa Zaina  
William Maher  
Jeff Carlisle  
Michelle Carey  
Brent Olson  
Rich Lerner  
Scott Bergmann  
Thomas Navin  
Jeremy Miller